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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 520

VIRD O. CUDD,

Appellant,

vs.

GALE A. MATHERS, Judge of the Ninth Judicial Circuit of the State of Illinois,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

JURISDICTIONAL STATEMENT

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No.

VIRD O. CUDD,

Appellant,

vs.

GALE A. MATHERS, Judge of the Ninth Judicial Circuit of the State of Illinois,

Respondent.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

JURISDICTIONAL STATEMENT

Appellant appeals from a judgment of the Supreme Court of the State of Illinois, entered on June 18, 1958, denying appellant's motion for leave to file a petition for a writ of mandamus and submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

Opinion Below

No opinion was delivered in the Supreme Court of the State of Illinois in this case. The order of the Court appears in Appendix B, *infra* at 19.

Jurisdiction

Appellant, a party to an automobile accident case, was ordered at trial to disclose whether he had insurance protection, what kind, and how much. This suit was brought in the Supreme Court of the State of Illinois for leave to file a petition for a writ of mandamus to direct the trial judge who entered said order to vacate it. Jurisdiction to adjudicate the mandamus proceeding from which this appeal is taken was given to the Illinois Supreme Court by Article VI, Sections 1 and 2 of the Constitution of the State of Illinois of 1870. It has been exercised in the case of *People* ex. rel. *Terry* v. *Fisher*, 12 Ill. 2d 231, 145 N. E. 2d 588, which also required disclosure of insurance coverage. The judgment of the Supreme Court of the State of Illinois in the instant mandamus suit was entered on June 18, 1958. There was no order respecting a rehearing. Notice of appeal was filed in that Court, whose Clerk possessed the only complete record of said mandamus suit and of the suit out of which it arose, on September 16, 1958. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by title 28, United States Code, section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

1. The appeal is timely. *Aspen Mining & Smelting Co.* v. *Billings*, 150 U.S. 31; Rules 10, 11, 12, 13 and 15 of the Revised Rules of the Supreme Court of the United States; Section 2101(c) of title 28 of the United States Code.

2. There is jurisdiction to entertain an appeal from the judgment of the highest court of a State in its original proceeding to deny or award a writ of mandamus or other writ to compel the action or non-action of state judicial or other officers. Such judgment is final and appealable within section 1257 of title 28 of the United States

Code. *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 568; *Michigan Central R. Co.* v. *Mix*, 278 U.S. 492, 494; *Missouri* ex rel. *St. Louis, B. & M. R. Co.* v. *Taylor*, 266 U.S. 200, 206; *Vernon-Woodbury Cotton Duck Co.* v. *Alabama Interstate Power Co.*, 240 U.S. 30; *Detroit & M. R. Co.* v. *Mich. R. Comm.*, 240 U.S. 564, 570-71; *McPherson* v. *Blacker*, 146 U.S. 1, 24.

3. There is jurisdiction of an appeal from state court mandamus cases which are distinct, adversary and independent proceedings resulting in a final and appealable judgment. *Detroit & M. R. Co.* v. *Mich. R. Comm., ibid; Hartman* v. *Greenhow*, 102 U.S. 672, 676.

4. There is jurisdiction of an appeal from a judgment of the highest state court in which a decision could be had which possesses the only record of the litigation from which it arose, which alone affirmatively shows the exhaustion of all State remedies. *Gorman* v. *Washington University*, 316 U.S. 98; *Hodges* v. *Snyder*, 261 U.S. 600; *Stratton* v. *Stratton*, 239 U.S. 55; *Crain Iron Co.* v. *Hoagland*, 105 U.S. 701; *Atherton* v. *Fowler*, 31 U.S. 143; *Underwood* v. *McVeigh*, 131 U.S. exix; *Gelston* v. *Hoyt*, 3 Wheat. 246, 304; *Webster* v. *Reid*, 11 How. 437, 457.

5. There is jurisdiction to entertain an appeal from a judgment of a state court favoring the validity of a statute questioned as repugnant to the "due process" clause of Section 1 of the Fourteenth Amendment of the Constitution of the United States. *Hammond Packing Co.* v. *Arkansas*, 212 U.S. 321, 325.

6. There is jurisdiction to entertain an appeal from the judgment of a state court favoring the validity of a statute questioned as repugnant to the "equal protection" clause of section 1 of the Fourteenth Amendent of the Constitution of the United States. *Ex parte Virginia*, 100 U.S. 339.

7. There is jurisdiction to entertain an appeal from a judgment of a State court favoring the validity of any

regulation of any branch or official of the state which is questioned, if it has the force of law, whether precisely a statute or not. *Illinois* v. *Board of Education*, 333 U.S. 203; *Hamilton* v. *University of California*, 293 U.S. 245, 258; *King Mfg. Co.* v. *Augusta*, 277 U.S. 100, 113; *Hayes* v. *Mich. Central R. R. Co.*, 111 U.S. 228.

Questions Presented

1. Does a court rule which requires a judge to enter an order in the trial of an automobile accident case compelling disclosure of whether appellant has liability insurance protection, what kind and how much, violate the due process and equal protection guarantees of the Fourteenth Amendment of the Constitution of the United States?

2. Does denial of mandamus by the Supreme Court of the State of Illinois to prevent said disclosure of liability insurance, thus giving effect to and enforcing the not appealable orders of said trial judge:

(a) Deprive appellant of a hearing and of his liberty and property without due process of law under section 1 of the Fourteenth Amendment of the Constitution of the United States by creating a conclusive and substantive presumption of law that all of appellant's pleadings are so false as to subject them to be summarily stricken solely for appellant's failure to answer interrogatories as to appellant's ability to satisfy a possible judgment against him, which have no just or reasonable relation to the truth or falsity of said pleadings nor to any issue nor to the merits in said cause, and where the enforcement of the presumption further subjects appellant, as a plaintiff, to non-suit, and to entry of default and judgment without proof against appellant as a counter-defendant and to impending punishment by indeterminate imprisonment and fines?

(b) Deprive appellant of his personal liberty without due process of law under section 1 of the Fourteenth Amendment to said Constitution of the United States in restraining and interfering with appellant's liberty and right to contract and with his free disposition of his personal and private contract of insurance which was voluntarily purchased by appellant solely for his own protection, use and enjoyment subject to no such restraint or interference?

(c) Deprive appellant of his personal liberty from restraint without due process of law under said section of the Fourteenth Amendment by placing appellant in constant jeopardy of imminent punishment by imprisonment in contempt proceedings, as prescribed by Illinois Supreme Court Rule 19-12?

(d) Deprive appellant of his property without due process of law under said section of the Fourteenth Amendment by restraint, compulsion and interference with his personal and private ownership, dominion and right of possession and disposition of an insurance contract which was voluntarily purchased by appellant for his private use, ownership and enjoyment?

(e) Deprive appellant of his property without due process of law under said section of the Fourteenth Amendment in taking and damaging appellant's said personal insurance contract?

(f) Deprive appellant of his property without due process of law under said section of the Fourteenth Amendment in denying him a hearing and a trial by jury before liability be adjudicated against him so as to condemn him without a hearing by the action already enforced against appellant by said trial judge under said law and by the imminent further punishment prescribed to be taken against appellant by Illinois Supreme Court Rule 19-12?

(g) Deprive appellant of procedural due process of law under said section of the Fourteenth Amendment in denying appellant a fair trial, or any trial, before an impartial jury unprejudiced by said calculated compulsive public record knowledge of the extent of appellant's financial worth and capacity to satisfy a possible verdict against him and of the extent of his adversary's relative wealth or poverty?

(h) Deny appellant the equal protection of the laws in violation of said section 1 of said Fourteenth Amendment in arbitrarily, specially and discriminatorily singling out appellant, under penalty of said punishments and as a condition to being heard by jury trial, to disclose record evidence before trial as to his ownership and possession of a personal liability insurance contract and as to the terms and conditions thereof, while not subjecting all other Illinois resident and non-resident litigants similarly circumstanced in similar litigation, who do not choose to own voluntarily such a policy of insurance, to any such compulsive disclosure of their financial condition, assets, liabilities and net worth or other capacity to satisfy any judgment which might be rendered against them as a similar limitation upon their access to the courts, or as a similar condition to their being heard before being condemned?

(i) Deny appellant the equal protection of the laws under said section of said Fourteenth Amendment by so imposing said penalties as punishments calculated to deter appellant, who is not thereby reasonably differentiated and classified from other litigants, from exercising his constitutionally protected right of private ownership of said insurance contract?

(j) Deny appellant the equal protection of the laws under said section of said Amendment, by creating a judicial and also a conclusive and arbitrary presumption of substantive

law precluding his proof, which invidiously discriminates against appellant in presuming that all his pleadings are so false that they may be stricken, from the not rationally connected fact that he failed to answer trial questions as to his financial worth, which fact is not reasonably material to any issue in the pleadings as to any party's liability or damage or as to any other question, thus depriving appellant of the benefit of the general rules of law available to other litigants requiring proof on either side by a preponderance of evidence of the presence or absence of liability and injury?

(k) Deny appellant the equal protection of the laws by so discriminating unreasonably against appellant and those happening to own one kind of private property, as a class, and in favor of the class of those not happening to have such property?

Statutes Involved

Illinois Revised Statutes, 1957, chapter 110, paragraphs 2, 3 and 58(1), (Session Laws of 1955, State of Illinois, pages 2239 and 2264, approved July 19, 1955), and Rules 19-4, 19-11 and 19-12(3) of the Supreme Court of the State of Illinois set forth at Illinois Revised Statutes, 1957, chapter 110, paragraphs 101.19-4, 101.19-11 and 101.19-12(3), all as construed by *People* ex rel. *Terry* v. *Fisher*, 12 Ill. 2d 231, 145 N. E. 2d 588.

Statement

Appellant seeks reversal of a judgment effecting a Court order entered at the trial of an automobile accident requiring disclosure of whether he has insurance liability protection, what kind and how much.

Appellant is the plaintiff and counterdefendant in an action commenced by him against Lee H. Van Tuyl, as defendant, in the Circuit Court of Warren County, Illinois,

in the Ninth Judicial Circuit of Illinois, being Case No. 57-12 in said Court, in which appellant, as plaintiff, is seeking $25,000.00 damages for permanent injuries alleged to have been sustained by him as the result of a collision between a motor vehicle driven by said Lee H. Tuyl and a motor vehicle driven by appellant, which occurred on February 23, 1956, in Warren County, Illinois. That action was commenced on February 20, 1957 (R. 5-15). On September 18, 1957, defendant, Lee H. Van Tuyl, filed his answer to the complaint and his counterclaim seeking $25,000.00 damages for permanent injuries against appellant (R. 22-30). On October 28, 1957, appellant filed his amended complaint and answer to said counterclaim (R. 43-52). On November 26, 1957, defendant, Lee H. Van Tuyl, filed his answer to the amended complaint (R. 58-61). On December 10, 1957, appellant filed his plaintiff's replication to the answer to the amended complaint (R. 62-64).

On April 18, 1958, the defendant and counterclaimant in that case served appellant, as plaintiff and counterdefendant, with notice of his motion for an order directing appellant, as plaintiff and counterdefendant, to answer certain interrogatories, in accordance with the terms of Illinois Revised Statutes, 1957, chapter 110, paragraphs 2, 3, 58(1), 101.19-4, 101.19-11, 101.19-12, comprising paragraphs 2, 3 and 58(1) of the Illinois Civil Practice Act and Rules 101.19-4, 101.19-11 and 101.19-12 of the Supreme Court of the State of Illinois, which interrogatories inquired: (a) whether, on February 23, 1956, there was a policy of public liability insurance insuring appellant, (b) if so, the name and address of such insurer and the number of the policy, (c) if so, the limits of the insurance afforded by such policy for persons and property damage, (d) if so, the name and address of the person having possession of the policy, and (e) if so, the named insured in said policy (R. 69-74). On April 23, 1958, appellant filed his objec-

tions, on grounds of deprivation of substantial rights protected by the United States Constitution as hereafter set forth, among other grounds, to said interrogatories in said cause (R. 76-89). On April 24, 1958, appellant filed additional similar objections to said interrogatories (R. 81-84). Said objections asserted, in detail, that said interrogatories and proceedings were prejudicial to and violative of appellant's federal constitutional rights in substantially the same respects set forth herein under "Questions Presented." They also asserted that said interrogatories were not material nor relative to the issues or merits of said cause. On April 24, 1958, said objections and additional objections of appellant were heard and fully argued and all objections were overruled. Appellant was ordered to answer said interrogatories on or before April 29, 1958 (R. 84-85). Appellant then moved, upon said constitutional and other grounds, to expunge said order and interrogatories, which motion was denied (R. 90-95, 96).

On April 29, 1958, the parties appeared with witnesses for trial and jurors were impaneled and sworn for their *voir dire* examination (R. 96). Defendant and counterclaimant, Lee H. Van Tuyl, objected to proceeding with the trial. Appellant thereupon filed his petition for an order suspending penalties under said Supreme Court Rule No. 19-12 for his failure to comply with the order to answer interrogatories. He prayed that the trial of the cause proceed to its conclusion and that enforcement of penalties be suspended until appellant could exhaust his legal remedies to assert his said constitutional and other objections to the order to answer the interrogatories (R. 98-107). Defendant and counterclaimant, Lee H. Van Tuyl, then filed his answer to said petition (R. 108-115). Arguments were heard thereon and the petition was denied (R. 96-97). Defendant and counterclaimant then moved to remove said cause from

the April 29, 1958, jury trial calendar and to stay the cause generally and indefinitely for refusal of appellant to answer said interrogatories and in order that said court might enter orders punishing appellant as provided by said statutes and rules (R. 116-120). Said motion was allowed over appellant's said objections and the Clerk of said Court was ordered to remove said case from said jury trial calendar and the cause was ordered continued generally and indefinitely (R. 97).

Appellant had no right of appeal from, nor procedure for review of, said trial court's orders dated April 24, 1958 and April 29, 1958. Said trial court's orders were not final and were therefore not appealable nor reviewable within the Illinois judicial system and procedures. Illinois Supreme Court Rules 50(2) and 77(1) compiled at Illinois Revised Statutes, 1957, chapter 110, paragraphs 50(2), and 77(1) provide to the extent pertinent to this appeal, as follows:

> "50(2) If multiple parties or multiple claims for a relief are involved in an action, the court may enter a final order, judgment or decree as to one or more but fewer than all of the parties or claims only upon an express finding that there is no just reason for delaying enforcement or appeal. In the absence of that finding, any order, judgment or decree which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action, is not enforceable or appealable, and is subject to revision at any time before the entry of an order, judgment or decree adjudicating all the claims, rights and liabilities of all the parties."
>
> "77(1) Appeals shall lie to the Appellate or Supreme Court, in cases in which any form of review may be allowed by law, to review the final judgments, orders or decrees of the circuit court, the superior court of Cook County, the county courts, the city courts and

other courts whose judgments, orders and decrees are reviewable therein, under such limitations and conditions as may be imposed by law and subject to rules."

Kavanaugh v. *Washburn*, 387 Ill. 204, 208, 56 N. E. 2d 420, 421, holds no Illinois judgment final and appealable unless it terminates all the litigation as to all parties.

Appellant was then 82 years of age and was compelled to wait indefinitely for possible resumption of the trial of his case while remaining in jeopardy of the trial court's enforcement upon appellant of the further penalties provided by said Supreme Court Rule 19-12, including the striking of all appellant's pleadings, adjudging appellant non-suited and in default upon such stricken pleadings, entering a substantial judgment against appellant without proof of liability, and adjudging unlimiting fine and imprisonment of appellant for contempt, thereby depriving appellant of his right to trial and condemning him without a hearing, whereby appellant is irreparably deprived of his constitutional rights, as hereinafter set forth, for such an indefinite period as to be permanent. Thereupon, appellant sought the only relief from said court orders which was open to him within the judicial system and procedures of Illinois, whereby appellant, on June 13, 1958, filed in the Supreme Court of the State of Illinois his motion for leave to file therein his petition for its writ of mandamus with suggestions and complete transcript of the record of said case numbered 57-12 in support thereof, then depositing for filing with the Clerk of Court appellant's proposed petition for writ of mandamus, in accordance with Illinois Supreme Court Rule 46(2), compiled at Illinois Revised Statutes, 1957, chapter 110, paragraph 101.46(2) (R. 1-246). Said motion, suggestions and petition clearly set forth and notified said court in detail of appellant's claims that said statutes and rules violated appellant's rights under section

1 of the Fourteenth Amendment of the Constitution of the United States, as hereinbefore set forth (R. 197 99, 208).

Said petition prayed that summons be issued against Gale A. Mathers, Judge of the Ninth Judicial Circuit of Illinois, who is the appellee herein, returnable as provided by law and by said Court; that said Court stay the further action of said appellee under the orders dated April 24, 1958, and April 29, 1958, and issue its writ of mandamus to the appellee requiring him to order expunged or stricken said interrogatories and all of said proceedings and orders pertaining to or resulting from said interrogatories, and to replace said cause on the next jury trial calendar of said Court for trial in the regular course of the business of said trial court, as provided by law.

On June 18, 1958, the Supreme Court of Illinois entered its judgment denying appellant's motion for leave to file his petition for writ of mandamus of said Court, without opinion, of which judgment a copy is set forth at Appendix B to this Statement (R. 247).

Substantiality of Questions Involved

Appellant respectfully represents that the questions involved in this appeal are substantial. The compulsory insurance disclosure question here presented has not been decided by this Court and is of nation-wide application. In *Gallimore* v. *Dye*, 21 F.R.D. 283, the Federal District Court of the Southern District of Illinois, Eastern Division, has recently held that compulsory disclosure of liability insurance violates Federal Rule 26(b), which is similar to the Illinois discovery rule, and decided that such coerced disclosure would be a federal deprivation of the party's due process rights. That Court specifically rejected the principle of *People* ex rel. *Terry* v. *Fisher*, 12 Ill. 2d 231, 149 N. E. 2d 588.

The issue raised by appellant's contention is that the Illinois statutes questioned here, as interpreted in *People* ex rel. *Terry* v. *Fisher*, 12 Ill. 2d 231, 145 N. E. 2d 588, procedurally and substantively violate, as to him, the due process clause of section 1 of the Fourteenth Amendment. This involves the problem of whether appellant, or any plaintiff or defendant in a personal injury case, may be compelled by an adverse claimant to disclose of public record the existence, coverage and limits of any liability insurance he voluntarily happens to own before and as a condition precedent to proceeding with jury trial of his claim. All this is under penalty of having his claim non-suited, his complaint dismissed, his pleadings stricken, judgment rendered against him, and the proceedings stayed indefinitely, in addition to punishment by unlimited fine and imprisonment for contempt. These penalties are provided for by the challenged discovery rules of the Supreme Court of Illinois, compiled in Illinois Revised Statutes, 1957, chapter 110, paragraphs 101.19-4, 101.19-11, and 101.19-12, and adopted by that Court pursuant to sections 2, 3 and 58 of the Civil Practice Act, being in that same chapter. This identical procedure was approved in *People* ex rel. *Terry* v. *Fisher*, 231 Ill. 2d 231, 145 N. E. 2d 588, in construing the same rules against the challenges there appearing. Appellant submits that such a law condemns him without a hearing and violates the fundamental law of the land.

This Court judicially knows that personal injury cases constitute a considerable segment of the cases in all trial courts and that they commonly involve liability insurance of various kinds and amounts. The challenged law is not part of any comprehensive legislative plan for compulsory, universal, public, negligence insurance compensation. It is entirely court made. This procedure will materially affect a substantial number of litigants. It is submitted

that such a compulsive public disclosure of this or any other litigant's wealth or poverty in a jury trial will necessarily affect him and the public adversely and materially in trials or settlements.

That the question of appellant's liability may be prejudiced to the extent that it is covered by any particular liability insurance dollar limits he may have is not the measure of the trouble. The inherent vice apparent in this procedure goes even beyond its further consequent prejudice to appellant's personal liability in excess of any limits of his liability insurance coverage. Upon this point, the fundamental problem submitted is whether the fairness of the trial of the initial question of appellant's liability itself is contaminated by such a public inquiry into his finances. Appellant contends that this law provides the public with, not a judicial inquiry, but a prejudicial inquisition. The punishments provided for failure to disclose are so arbitrary and drastic as to deter most litigants from standing upon even the most basic constitutional right. The subject matter of the enforced disclosure relates to no issue of liability or damage on the merits and exposes appellant to prejudice resulting from the challenged authorization to compel disclosure of his wealth or poverty before trial. In negligence cases, liability and damage are the proper trial inquiries—not the wealth or poverty of the parties.

The further issue raised by appellant's contention that the Illinois statutes here questioned are repugnant to the "equal protection" clause of section 1 of the Fourteenth amendment, as they affect appellant, is an equally vital one, not only to appellant, but to many others of the public similarly situated. The statutes discriminate against appellant, and in favor of others, as classes, on the basis that only he chose to insure in whole or part against his liability.

This basis is a purely arbitrary distinction without a reason. *Truax* v. *Corrigan*, 257 U.S. 312.

Moreover, these statutes create a judicial, conclusive and arbitrary presumption of substance, that, if appellant fails to disclose his financial worth, his pleadings will be presumed to be false or in bad faith so that they may be stricken. Yet, no rational connection appears between any element in the appellant's pleadings and his financial worth to justify such an arbitrary and conclusive presumption. *Heiner* v. *Donnan*, 285 U.S. 312, 329.

Such naked judicial power may not be validly created by legislation, nor by court rule.

The striking of pleadings and preclusion of proof as a punishment for failure to produce demanded evidence has always been condemned as denial of equal protection. *Hovey* v. *Elliott*, 167 U.S. 409, 413.

Striking pleadings and precluding proof upon a presumption of their falsity warranted only by a failure to disclose evidence upon order has been equally condemned for the the same fatal defect. *Hammond Packing Co.* v. *Arkansas*, 212 U.S. 322, 350.

It is believed that the determination of the constitutional validity of the disclosure ordered herein is substantially and vitally important not only to appellant, but to that considerable segment of the public which owns liability insurance policies.

Respectfully submitted,

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Attorneys for Vird O. Cudd,
Appellant.

APPENDIX A

Text of Statutes Involved

The statutes of the State of Illinois, insofar as they compel insurance disclosure, are Illinois Revised Statutes 1957, chapter 110, paragraphs 2, 3 and 58(1), (Session Laws of 1955, State of Illinois, pages 2239, 2264, approved July 19, 1955). The court rules of Illinois, insofar as they compel insurance disclosure, are Illinois Supreme Court Rules 19-4, 19-11 and 19-12(3), which are collected and printed at Illinois Revised Statutes 1957, chapter 110, paragraphs 101.19-4, 101.19-11 and 101.19-12(3). These statutes and court rules have been construed together by *People* ex rel. *Terry* v. *Fisher,* 12 Ill. 2d 231, 145 N. E. 2d 588, to require disclosure of insurance liability coverage. This construction as to said disclosure is deemed conclusive upon the federal courts. *West* v. *Amer. T. & T. Co.*, 311 U. S. 223.

The Illinois statutes, so far as they compel insurance disclosure, are at chapter 110, paragraphs 2, 3 and 58(1) of the Illinois Revised Statutes. They provide only that:

> "(2)(1) The Supreme Court of this State has power to make rules of pleading, practice and procedure for the city, town, county, circuit, superior, Appellate and Supreme Courts supplementary to but not inconsistent with the provisions of this Act, and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure. Unless otherwise indicated by the text, references in this Act to rules are to rules of the Supreme Court. * * *"
>
> "3. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules adopted hereunder, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorney's fees, which any violation causes another party to incur, or other action that may be appropriate."

* * * * *

"58(1) Discovery, admissions of fact and of genuineness of documents and answers to interrogatories shall be in accordance with rules."

Pursuant to said statutory authority the Supreme Court of Illinois has adopted rules for all Illinois Courts of record which compel insurance disclosure only as follows:

"101.19-4(1) Upon a discovery deposition, the deponent may be examined regarding any matter, not privileged, relating to the merits of the matter in litigation, whether it relates to the claim or defense of the examining party or of any other party, including the existence, description, nature, custody, condition and location of any documents or tangible things and the identity and location of persons having knowledge of relevant facts. The deponent may be questioned by any party, and if hostile, may be questioned as if under cross-examination."

"101.19-11(1) Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer, partner or agent. Interrogatories may be served within the same time and under the same circumstances as depositions may be taken. Interrogatories may be served after a deposition has been taken, and a deposition may be taken after interrogatories have been answered, but the court may make appropriate protective orders."

"101.19-11(2) The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories and on the other parties within 15 days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, extends or shortens the time or excuses service on the other parties."

"101.19-11(3) Within 10 days after service of interrogatories a party may serve written objections thereto together with a notice of motion for hearing of the objections. Answers to interrogatories to which objection is made shall be deferred until the objections are determined, but the making of objections to certain interrogatories shall not delay the answering of interrogatories to which objection is not made. If the objections are overruled, the court shall fix the time for answering."

"101.19-11(4) Interrogatories may relate to any matters which might be inquired into by deposition. The answers may be used in evidence to the same extent as the deposition of an adverse party."

"101.19-12 * * * (3) If a party, or any person at the instance of or by collusion with a party, unreasonably refuses to comply with any provision of Rules 17 to 19-12, both inclusive, or Rule 22, or fails to comply with any order entered under said rules, the court may, on motion, in addition to remedies elsewhere specifically provided, order one or more of the following, as may be appropriate: that the party be nonsuited; that his complaint be dismissed; that all or any part of his pleadings be stricken and judgment rendered on the remaining pleadings in the case; that he be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense respecting which discovery is sought; or that further proceedings be stayed pending compliance. In lieu of or in addition to the foregoing, the court may by contempt proceedings compel obedience by any party or person to any subpoena issued or order entered under said rules."

APPENDIX B

Copies of Opinions and Judgments Below

There was no opinion rendered by the Supreme Court of the State of Illinois in this suit. The judgment of the Court is found at R. 247, and is reproduced herein as follows:

"Be It Remembered, that, to-wit: on the 18th day of June, A. D. 1958, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 34918

People ex rel. Vird O. Cudd,

Petitioner,

vs.

Gale A. Mathers, Judge of the Ninth Judicial Circuit, Illinois

Respondent

Mandamus

"And now, on this day, the Court having duly considered the motion by petitioner for leave to file an original petition for writ of mandamus, and being now fully advised of and concerning the premises;

"It Is Hereby Ordered that the motion by petitioner for leave to file an original petition for writ of mandamus be, and the same is, denied."